

# Legal Information v. Advice & Legal Resources Primer



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The provision of legal advice as a non lawyer is considered the **Unauthorized Practice of Law** (UPL)

## Montana Rules of Professional Conduct:

Rules 5.3 Supervising attorney liability for non attorney staff conduct.

Rule 5.5 Unauthorized Practice of law prohibited

Rule 8.5 Certification of Attorneys

# MRPC Rule 5.3



Lawyer must do the following with respect to non lawyer employees:

- (a) make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the employer.
- (b) be responsible for conduct of such person that would be in violation of the MRPC if:
  - (a) Lawyer orders, has specific knowledge, ratifies, or ignores conduct
  - (b) Knows of conduct when the consequences can be mitigated and fails to take remedial action

# General Definitions



- **Legal information**

Educating the public and future litigants through neutral statements of law or legal procedure

- **Legal advice**

Guiding or directing the public or potential litigant by recommending a specific course of action based on the individual's specific circumstances.

# *Pulse v. North American Land Title Co. of Montana,*



What constitutes the practice of law is not easily defined. In *Cowern v. Nelson* (1940), 207 Minn. 642, 290 N.W. 795, 797, the Minnesota Court stated: “The line between what is and what is not the practice of law cannot be drawn with precision. Lawyers should be the first to recognize that between the two there is a region wherein much of what lawyers do every day in their practice may also be done by others without wrongful invasion of the lawyer's field.”

707 P.2d 1105 (Mont. 1985)

# UPL Regulation



## **The Office of Consumer Protection UPL investigates complaints that:**

- ✦ are against an attorney not licensed to practice law in Montana or
- ✦ against a person who has, for economic gain, misrepresented their status or abilities to perform services that require a law license **OR** who has engaged in acts that are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

<https://doj.mt.gov/consumer/for-consumers/unlicensed-practice-of-law/>

# Legal Information Myth Buster



*“The fact that the information I have will help someone does not make provision of that information improper.”*

# Legal Information 1, 2, 3, 4...



## Where to start...

1. Consult common standards: *See Legal Information v Advice At-A-Glance*
2. Avoid “should”
3. Pay attention to specifics
4. Make community referrals



# General Guidelines



## **Legal information**

- Inform a litigant of his or her options and the steps needed to carry out an option.
- Answer questions that call for factual information – questions that start with “who,” “what,” “when,” “where,” or “how.”

## **Legal advice**

- Suggest which options the litigant should pursue.
- Answer questions that call for an opinion about what a litigant should do – questions that contain the words “should” or “whether.”

# General Guidelines



## Legal information

- Explain court rules and procedures
- Tell a litigant how to bring an issue to the attention of the court.

## Legal advice

- Suggest which of several available procedures a litigant should follow
- Suggest whether it is wise to bring that issue before the court, how best to present the issue, or how the judge is likely to decide the case.

# General Guidelines



## **Legal information**

- Provide information about past rulings in a case
- Provide cites to (or copies of) statutes, court rules, and ordinances

## **Legal advice**

- Predict what the court will do
- Provide an analysis or interpretation of statutes or ordinances based on the specific facts of a litigant's case

# General Guidelines



## **Legal information**

- Staff can provide forms and instructions, and record on the forms information provided by the litigants
- Staff can check a court user's papers for completeness and inform the person of specific problems identified and how to fix them.

## **Legal advice**

- Draft the wording to be entered on forms

# It's in the words we use



“Can I?” or “How do I?” Telling someone how to do something is almost always appropriate.

***E.g. How do I evict my tenant?***

*“If you are going to represent yourself, there are forms and information online that might be helpful.”*

*“You can also get information about evictions at our State Law Library, Self Help Law Center, or from [www.montanalawhelp.com](http://www.montanalawhelp.com)”*

# Power of the “should”



- If you are asked “how should” or “should I” this is a red flag that the customer may be asking for advice.
- If you find yourself using the word “should” in your response to a litigant, you may be giving advice.

## Responding to questions:

- Try rephrasing the question or response
- In many cases, you can point out various options that the person can consider in making his or her decision.
- You can also provide information about legal services, such as the local bar association or legal aid society, but you should not make a referral to private attorneys or a private agency.

# Power of the “should”: Example One



***My friend's dog bit me. Should I sue him?***

*You may want to talk to a lawyer to help you make that decision. If you decide to file a lawsuit on your own, I can give you a packet of information on how to file a civil action.*

# Power of the “should”: Example Two



## ***Should I get a lawyer?***

*You are not required to have a lawyer to file papers or to participate in a case in court.*

*However, a simple consultation with a lawyer is a way to get advice on whether you should hire counsel in your case.*

*Most litigants are more satisfied with the outcome of their case if they have been represented. Only you can make the decision.*

*I can provide you a list of organizations in this area that you can call for free or low-cost legal help if you qualify.*



# Legal advice is in the eye of the beholder



- Provide a meaningful disclaimer
- Repeat distinction often
- Simple and short disclaimers are more likely to be read and understood

# Defining the relationship with your audience



- Client?

*1: one that is under the protection of another : dependent*

*2:*

*a : a person who engages the professional advice or services of another <a lawyer's clients>*

*b : customer <hotel clients>*

*c : a person served by or utilizing the services of a social agency <a welfare client>*

- Customer?

*1: one that purchases a commodity or service*

*2: an individual usually having some specified distinctive trait <a real tough customer>*

- Consumer?

*: one that utilizes economic goods*

# Legal advice is in the eye of the beholder



## *Solving the mystery of “they”*

It's critical for service providers to share approaches to customer issues so we are all aware of the services being provided any particular person.

- Call
- Email
- Job Shadow
- Stop by

# Court Help Program Service



# Court Help Services



- **Self Help Law Center** provides services by walk-in or over the phone
- **Self Help Law Kiosk** is a computer and printer for printing forms
- **Self Help Law Station** is a box of labeled forms.
- **Appointments** are regional office hours or scheduled by convenience of the customer.

[www.courts.mt.gov](http://www.courts.mt.gov)

# Montana Legal Service Association (MLSA)



## Process:



## Appropriate Referrals:

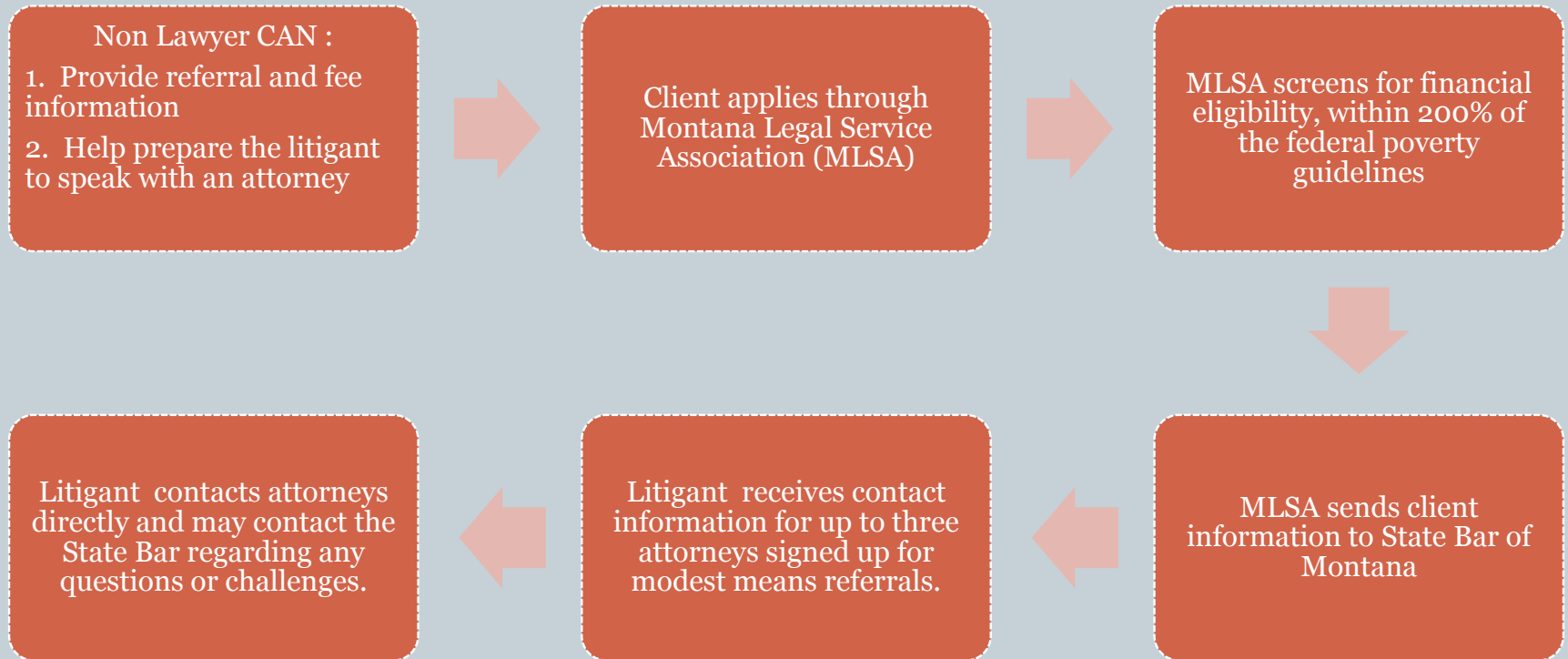
***“When in doubt, refer”***

- Very limited or no financial resources
- Complicated or otherwise precedent setting cases
- One of MLSA specific topic areas: foreclosure, tax Assistance, migrant workers, domestic violence, housing, public benefits *and much more!*

# State Bar of Montana: Modest Means



## Process:



# State Bar of Montana: Modest Means (Cont.)

## Appropriate Referrals:

- Have *some* financial means
- Highly complicated, attorney representation is essential

### MONTANA MODEST MEANS REDUCED FEE SCHEDULE

*(In state residents only)*

1.	<b>UNCONTESTED DIVORCE</b> (total agreement) No children	\$500 (flat fee, plus costs)
1.	<b>CONTESTED DIVORCE</b>	\$1,000 retainer billed at \$60 per hour for out-of-court and \$70 p/h for in-court, plus costs
1.	<b>CONTESTED CUSTODY/ VISITATION ISSUES</b>	\$1,000 retainer billed at \$60 per hour for out-of-court and \$90 p/h for in-court, plus costs
1.	<b>SIMPLE WILLS WITHOUT TRUSTS</b>	\$30, plus costs
1.	<b>HUSBAND &amp; WIFE WILLS</b>	\$50, plus costs
1.	<b>IMMIGRATION</b>	200, plus costs
1.	<b>POWER OF ATTORNEY</b>	\$25, plus costs
1.	<b>POST-DIVORCE MOTIONS</b> Change of child support; custody; visitation; alimony	\$500 retainer billed at \$60 per hour for out-of-court and \$90 p/h for in-court, plus costs
1.	<b>UNCONTESTED ADOPTIONS</b>	\$175, plus costs
1.	<b>NAME CHANGES</b>	\$75, plus costs
1.	<b>BANKRUPTCY (Chapter 7 ONLY)</b>	\$600, plus costs



# State Bar of Montana: Lawyer Referral Service (LRIS)



## Process: [New Website!](#)



## Appropriate Referrals:

- Not of limited means
- Typical contingency fee arrangement
- Attorneys fees are available: e.g. Consumer law, landlord/tenant.



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